1991

The State of Utah v. Rodney James Scheel : Brief of Appellant

Utah Supreme Court

R. Paul Van Dam; Attorney General; Attorney for Appellee.
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	91-0350-CA
v.	:	
RODNEY JAMES SCHEEL,	:	Case No. [redacted] Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction for Aggravated Arson, a first degree felony, in violation of Utah Code Ann. section 76-6-103 (1990), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
RODNEY JAMES SCHEEL,	:	Case No. 910012 Priority No. 2
Defendant/Appellant.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
RODNEY JAMES SCHEEL,	:	Case No. 910012 Priority No. 2
Defendant/Appellant.	:	

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 78-2-2(3)(i) (1987 & Supp. 1990), whereby a defendant in a criminal case may take an appeal to the Supreme Court from a final judgment and conviction for a first degree felony. Mr. Rodney J. Scheel was convicted of Aggravated Arson, a first degree felony, in violation of Utah Code Ann. § 76-6-103 (1990), in the Third Judicial District Court in and for Salt Lake County, State of Utah.

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following statutes are found in Addendum A:

Utah Code Ann. § 76-1-402
Utah Code Ann. § 76-3-203
Utah Code Ann. § 76-3-402
Utah Code Ann. § 76-6-101
Utah Code Ann. § 76-6-102
Utah Code Ann. § 76-6-103
Utah Code Ann. § 78-2-2

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. Was there enough evidence to support the aggravated arson conviction? "In order to upset a conviction for insufficiency of the evidence, a defendant must show that reasonable minds must necessarily entertain a reasonable doubt as to defendant's guilt." State v. Linden, 666 P.2d 875 (Utah 1983) (per curiam).

2. When two statutes prohibit the same conduct but impose different penalties, on appeal should this Court vacate the greater statutory conviction and remand for resentencing with instructions to enter a conviction pursuant to the other equally applicable statute? This Court "may correct an illegal sentence . . . at any time." Utah R. Crim. P. 22(e); State v. Babbel, 157 Utah Adv. Rep. 47 (Utah 1991). "Whether a statute applies to a particular set of facts is a question of law." State v. Waite, 803 P.2d 1279, 1282 (Utah App. 1990).

STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

This is an appeal from a judgment and conviction for Aggravated Arson, a first degree felony, in violation of Utah Code Ann. § 76-6-103 (1990), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding. On July 6, 1990, a jury convicted Rodney Scheel of the charge stated above. Record [hereinafter "R"] at 65. Following a 90 day evaluation by the division of corrections, (R 75), the trial court continued the sentencing proceedings until December 10, 1990. (R 84).

On December 10, 1990, the court granted Mr. Scheel's motion to enter a judgment of conviction for the next lower category of offense and imposed sentence accordingly. (R 85). The court sentenced the defendant/appellant to an indeterminate term of one to fifteen years in the Utah State Prison and also ordered him to pay various court ordered amounts of fines and restitution. (R 85).

STATEMENT OF THE FACTS

On or about November 26, 1989, Rodney Scheel returned to Salt Lake City in the late evening hours following a brief stay in New Prague, Minnesota. Transcript of Trial Proceedings, dated July 6, 1990 [hereinafter "R:100"] at 278, 283. Mr. Scheel had stayed there for approximately two weeks, visiting his mother, a sister, and a friend. R:100 at 278. His work schedule and a traffic matter prompted Rodney's return. R:100 at 287; Transcript of Trial Proceedings, dated July 5, 1990 [hereinafter "R:99"] at 91.

Unable to locate his wife, Jill, Rodney took a cab from the airport to 3595 South 700 East, Jill's mobile trailer home. R:100 at 283-84, 304. When Rodney entered the trailer, he discovered that Jill had moved out. R:100 at 285. Rodney and Jill had problems domestically, even to the point of filing divorce papers, but they always managed to resolve matters and reconcile amicably. R:99 at 70; R:100 at 280-81. In fact, immediately after Jill had filed for divorce, she agreed to get "back together [with Rodney] to try to work out [their differences]." R:99 at 70. They

lived together again and went "house hunting" thereafter. R:99 at 82. Mindful of their past reconciliations, Rodney attempted to find his wife through a friend. He also checked his answering service for messages before retiring for the evening. R:100 at 286.

Prior to "settling in," however, Rodney had to counter the cold winter temperatures by lighting the furnace. R:100 at 287. Jill left on the utilities but since the furnace had gone out, the trailer's interior remained cold. R:100 at 285, 287.

The furnace had malfunctioned before. R:99 at 87. Jill Scheel admitted that the furnace was "as old as 22 years[,]" and it needed parts and servicing on a regular basis. R:99 at 87. In addition to annual winter "check ups" by the "gas man," R:99 at 92, the furnace was relit on at least two prior occasions in the past four years. R:99 at 87. No maintenance check had been made immediately before the fire, though, with Ms. Scheel telling fire investigators that 12 to 18 months may have elapsed since the furnace was last repaired. R:100 at 242. Her estimates varied during the trial and she ultimately conceded that she could not "recall exactly when [she] had the gas man out there [last for maintenance]." R:99 at 87.

The State's witnesses acknowledged that a layperson would have difficulties lighting the furnace. R:99 at 65, 123. Rodney Scheel, unfamiliar with the functioning of the furnace, twisted some paper together, lit the end, and inserted it into the hole of the furnace. R:100 at 289. He turned the furnace's control knob to the

"pilot" position and depressed a button in order to light the pilot light. R:100 at 288-89.

Unexpectedly, a burst of fire ignited, causing minor injuries to Rodney's hand and singeing his hair. R:100 at 289. He went to the bathroom and soaked his hand in water for a few minutes. R:100 at 289. Upon his return, he discovered that a fire was ablaze on the shag carpet by the base of the furnace. R:100 at 289, 314. Rodney had accidentally dropped the lit paper in front of the furnace on his way to the bathroom.

Rodney attempted to smother the fire with a small curtain from a nearby window. R:100 at 291. The fire quickly grew out of control, however, in the tight confines of the mobile home. R:100 at 291. He escaped out of the trailer and ran for help. Receiving no response after banging relentlessly on his neighbors' doors, Scheel stopped a passing motorist and requested assistance. R:100 at 291-93. He then returned to the trailer where he awaited the police and fire departments. R:100 at 293.

Once the fire was extinguished, Rodney spoke briefly with Russell Westwood, a fire lieutenant who had responded to the scene. Rodney responded fully to all of Westwood's questions. R:99 at 55. Scheel also explained what had happened to Frank Brown, a fire battalion chief. R:100 at 296. No actions were then taken to arrest Mr. Scheel. R:99 at 55; R:100 at 240. The damage to the mobile trailer home amounted to $4,500. (R 85).

The State's case-in-chief focused primarily on how a proper functioning furnace should work. In short, if a properly

functioning furnace would not have operated in the manner stated by Mr. Scheel, the fire could not have been accidental. As discussed below, however, even if a furnace operates in a manner consistent with the testimony of the State's witnesses, the State presented no evidence showing that the Scheel's furnace had in fact functioned properly. The Scheel's malfunctioning furnace could have accidentally caused the fire.

SUMMARY OF THE ARGUMENT

The State did not prove that Rodney Scheel intentionally and unlawfully caused a fire. A fire did occur but it was accidental. Even when the evidence is viewed in a light most favorable to a verdict, the State could only speculate on how the fire had started and whether the Scheel's furnace had malfunctioned or operated in a manner consistent with his testimony.

Alternatively, even if the evidence was sufficient, Rodney Scheel should have received the lesser penalty accompanying one of two potentially applicable statutes. The elements of "arson" and "aggravated arson" both prohibit the alleged conduct in an identical manner. Although Mr. Scheel was not sentenced properly during the lower court proceedings, he now respectfully requests this Court to correct his illegal sentence pursuant to the "Shondel" doctrine. See State v. Shondel, 22 Utah 2d 343, 453 P.2d 146 (1969); Utah R. Crim. P. 22(e) (this Court "may correct an illegal sentence . . . at any time").

ARGUMENT

POINT I

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION FOR AGGRAVATED ARSON

"To successfully attack the verdict, an appellant must marshall all the evidence supporting the verdict and then demonstrate that, even viewing the evidence in the light most favorable to that verdict, the evidence is insufficient to support it." Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985); accord Cambelt Intern. Corp. v. Dalton, 745 P.2d 1239, 1242 n.1 (Utah 1987). "A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages . . . a habitable structure[.]" Utah Code Ann. § 76-6-103.

Following the State's case-in-chief Rodney Scheel moved to dismiss, arguing that the State had not proven its prima facie case. R:100 at 258. Mr. Scheel made a similar motion following the presentation of his defense. R:100 at 333. He stressed that the element of intent was missing due to the accidental occurrences leading up to the fire. The parties did not dispute that a fire had damaged a mobile trailer home.

For purposes of argument, Mr. Scheel concedes that the mechanisms of an ordinary furnace would prevent it from lighting a curtain a fair distance away. Nevertheless, the evidence did not establish that the Scheel's furnace functioned in a manner consistent with a normal furnace. R:99 at 122, 179. Indeed, the

State did not disprove Rodney Scheel's affirmative defense that the fire was accidental. See State v. Wood, 648 P.2d 71, 82 n.7 (Utah 1981) ("Unlike some other jurisdictions, Utah imposes on the prosecution the burden to disprove the existence of affirmative defenses beyond a reasonable doubt once the defendant has produced some evidence of the defense"); State v. Durant, 674 P.2d 638, 642 (Utah 1983); State v. Tebbs, 786 P.2d 775 (Utah App. 1990).

The State's witnesses admitted that part of the Scheel's furnace was "just too badly heat damaged to be able to determine anything." R:99 at 122, 146, 180. No tests were actually performed on Scheel's furnace; the State made only visual observations. R:99 at 64, 102, 121-22, 130, 148. Moreover, since the State was unable to ascertain the furnace's model number, its date of manufacture, its degree of functioning, or its condition, R:99 at 64, 122, 177, the testing done on "functionally similar" models (containing different parts) was speculative at best. R:99 at 172-73. State testimony concerning how a furnace is "suppose to function," a "best case scenario" not proven to exist with the Scheel's furnace, is inapposite here. R:99 at 179.

The State also emphasized that the furnace's control knob was in the "on" position. R:99 at 114, 145. On a properly functioning furnace, the State argued, the pilot light could not be lit unless the knob is in the "pilot" position. R:99 at 145. But see R:100 at 306. Again, even if the mechanisms of a hypothetical furnace were so limited, the State did not prove that the old Scheel

furnace had not (mal)functioned differently. After the fire, the State was simply unable to rule out a malfunction or determine which parts needed to be replaced. R:100 at 243. The State did not know what ignited the fire, how it was fueled, and what combustible material was involved. R:100 at 226-27.

The likelihood of a "small flash" inside the furnace, a possibility acknowledged by the State, R:99 at 126, 173, provided further support for Mr. Scheel's explanation. After Rodney inserted the burning paper into the furnace, a flash ignited briefly and singed Rodney's hair. Shocked and startled, Scheel accidentally dropped the burning paper on his way to the bathroom. R:99 at 124; R:100 at 289. Having dropped the paper near the base of the furnace, the shag carpet caught on fire and quickly spread out of control. R:100 at 314. Rodney tried unsuccessfully to smother the fire with a curtain. R:100 at 313.

A complete breakdown of the furnace was unnecessary for these events to occur. Rather, if, as the State conceded, a small amount of gas could have been available for igniting the "flash," R:99 at 178-79, nothing more than bad luck factored into the fire.

A fire fighter on the scene noticed no wounds on Rodney, although the fireman admitted that during his own career, he also suffered burns which did not require treatment. R:99 at 62-63. Rodney similarly declined offers of medical assistance. R:100 at 294.

Mr. Scheel concedes that a "flash" did not ignite a curtain a fair distance away from the furnace. Thus, fire

lieutenant Russell Westwood properly found unacceptable how a "flame [c]ould shoot out at an angle and catch curtains on fire that far away [across the hallway]." R:99 at 54. Westwood's suspicions, however, misinterpreted Scheel's statements.

The fire burned the curtain only after Rodney had pulled it from the window in his attempt to smother the flames in front of the furnace. R:100 at 291. His explanation accords the "V pattern" burning observed inside the trailer. Damage based near the front of the furnace extended upward towards the ceiling in the shape of a "V." R:99 at 195, 199; R:100 at 207. The physical evidence supported Mr. Scheel's testimony.

Instead of seeking clarification for his concerns, Westwood simply maintained his conclusory suspicions without giving Rodney an opportunity to explain. R:99 at 50-51. A few follow up questions would have resolved how a curtain "off to the side might have caught fire[.]" R:99 at 56. Relying on unsubstantiated hearsay statements, particularly the account of battalion chief Frank Brown (a State witness unavailable at trial for purposes of cross examination, R:100 at 216, 218), proved incorrect.

Rodney Scheel did not light a fire out of anger towards his wife. The two had reconciled in the past and Rodney hoped to reconcile again. R:100 at 286. A protective order had been issued against Rodney, but he knew nothing about it. R:100 at 303. Furthermore, Ms. Scheel admitted that she "never thought [Rodney] would hurt [her, and obtained it only so] he wouldn't <u>want to</u> hurt

[her]." R:99 at 72 (emphasis added). Rodney may have been saddened and surprised by Jill's departure, yet he always maintained his composure. R:100 at 302.

The above evidence reflected nothing more than unfounded suspicions, left unexplained by the State's investigators. The opinions of the State witnesses were based improperly on dissimilar test results and failed to establish how the Scheel's furnace had functioned. The evidence was insufficient on the element of intent; the State did not prove that Rodney Scheel had intentionally set a fire.

POINT II

APPELLANT SHOULD BE RESENTENCED, WITH A NEW JUDGMENT OF CONVICTION ENTERED FOR THIRD DEGREE ARSON PURSUANT TO THE SHONDEL DOCTRINE.

Assuming, arguendo, the evidence was sufficient, the aggravated arson conviction should nonetheless be reversed and vacated, with judgment entered instead for the lesser charge of arson. As discussed below, since the "arson" and "aggravated arson" statutes both prohibited the conduct alleged here, Utah Code Ann. §§ 76-6-102(1)(b), 76-6-103(1)(a), the Shondel doctrine entitled Rodney Scheel to receive the lesser of two potentially applicable punishments. State v. Shondel, 22 Utah 2d 343, 453 P.2d 146 (1969).

"A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages . . . a habitable structure[.]" Utah Code Ann. § 76-6-103(1)(a). Similarly, "[a] person is guilty of arson if under circumstances not

amounting to aggravated arson, he by means of fire or explosives unlawfully and intentionally damages . . . the property of another." Utah Code Ann. § 76-6-102(1)(b). "Property" is explicitly defined as a habitable structure. Utah Code Ann. § 76-6-101(1).

Once the definition of property is incorporated into the arson statute, the arson and aggravated arson statutes both prohibit the unlawful burning of a mobile home. Compare Utah Code Ann. § 76-6-102(1)(b) with Utah Code Ann. § 76-6-103(1)(a); see also Utah Code Ann. § 76-6-101(1). Each statute prohibits damage by means of fire or explosives to a habitable structure and each statute prohibits damage done with an unlawful and intentional state of mind. The mens rea and actus reus proscriptions are the same.

The prefatory phrase of the arson statute, "under circumstances not amounting to aggravated arson," is a phrase without meaning for the present case.[1] Utah Code Ann. § 76-6-102(1). Under the facts involved here, no damage to a habitable structure could amount to arson but fall short of aggravated arson.

Since both statutes prohibited the same conduct, Mr. Scheel should have been received the sentence for a third degree

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[1] Though inapplicable here, a circumstance "not amounting to aggravated arson" could exist under a different arson subsection. See Utah Code Ann. § 76-6-102(1)(a) (the "defrauding an insurer" arson provision does not amount to aggravated arson). The jury instructions in the case at bar, however, stressed only the burning of a habitable structure. (R 52, 53).

felony. See State v. Shondel, 22 Utah 2d 343, 453 P.2d 146 (1969). At issue in Shondel[2] was whether a felony statute or a misdemeanor statute governed the defendant's crime of unlawful possession of LSD (lysergic acid diethylamide). 453 P.2d at 147. The Court applied the misdemeanor statute, reasoning: "where there is doubt or uncertainty as to which of two punishments is applicable to an offense, an accused is entitled to the benefit of the lesser." Id. at 148; cf. State v. Bryan, 709 P.2d 257, 263 (Utah 1985) ("the criminal laws must be written so that there are significant differences between offenses and so that the exact same conduct is not subject to different penalties depending upon which of two statutory sections a prosecutor chooses to charge").

Rodney Scheel should also have received[3] the lesser of two potentially applicable punishments. Because the damage to the

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[2] The Shondel doctrine focuses on whether the involved conduct was proscribed by more than one statute, and not simply on whether the elements of the greater offense were proven. See State v. Bryan, 709 P.2d 257, 265 (Utah 1985) (opinion denying petition for rehearing) (emphasis added) (if "the defendant could have been convicted under either [potentially applicable statute] for precisely the same act, . . ." the Shondel doctrine still applies); see also id. at 264 (Hall, C.J., concurring) (even though "[t]he facts of this case amply support[ed] the conviction of [the greater offense, the sentence was overturned] . . . because the Legislature [had not made] any distinction between the elements of the [greater and lesser offenses]").

[3] Rodney Scheel was convicted initially of aggravated arson, a first degree felony. (R 65); Utah Code Ann. § 76-6-103. The trial court then entered a judgment of conviction for a second degree felony pursuant to Utah Code Ann. § 76-3-402, and sentenced him to, inter alia, an indeterminate term of one to fifteen years. (R 85). The Shondel doctrine still applies because the punishment under either conviction may still be greater than the penalty for a third degree felony conviction. Utah Code Ann. §§ 76-3-203(1)-(3).

mobile trailer home was less than $5,000, (R 85), his prison term should not have exceeded a zero to five year indeterminate term. See Utah Code Ann. §§ 76-6-102(3)(b), 76-3-203(3).

Although the Shondel doctrine was not raised below, this Court "may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time." Utah R. Crim. P. 22(e);[4] cf. State v.Babbel, 157 Utah Adv. Rep. 47, 49 (Utah 1991) ("because an illegal sentence is void, a trial court may correct an illegal sentence at any time"). By remanding this case for resentencing, Mr. Scheel still receives a penalty proscribed by law, Utah Code Ann. § 76-3-203(3), albeit exclusive of his right to a new trial.[5] In short, even if there was a crime, the sentence imposed by the trial court and the discretion exercised by the Board of Pardons should not result from a mislabelled conviction. See id. at 48 (quoting Chess v. Smith, 617 P.2d 341, 343 (Utah 1980) ("An erroneous judgment of conviction is as much an affront to society's interest in the fair administration of justice as it is to an individual's

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[4] Cf. Utah R. Evid 103(d) (courts may take notice of plain errors affecting substantial rights although they were not brought to the attention of the lower court); Utah R. Crim. P. 19(c) (notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid a manifest injustice").

[5] In the event this Court addresses the Shondel issue, Mr. Scheel concedes, for purposes of resentencing, the appropriateness of the third degree arson conviction. Cf. State v. Bolsinger, 699 P.2d 1214, 1221 (Utah 1985) (a new trial is not required if the defendant consents to a reduction and the elements of the included offense were necessarily proven); Utah Code Ann. § 76-1-402(5).

rights")). The sentence for a third degree arson conviction should have been imposed.

CONCLUSION

Appellant respectfully requests that this Court reverse his conviction for lack of evidence, or, in the alternative, reverse his conviction and remand for resentencing with instructions to enter a judgment of conviction for arson, a third degree felony.

SUBMITTED this 29th day of May, 1991.

RONALD S. FUJINO
Attorney for Defendant/Appellant

BROOKE C. WELLS
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that ten copies of the foregoing will be delivered to the Utah Supreme Court, 332 State Capitol, Salt Lake City, Utah 84114, and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 29th day of May, 1991.

RONALD S. FUJINO

DELIVERED by _____

this _____ day of May, 1991.

_____

ADDENDUM A

(3) A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or

(c) It is specifically designated by a statute as a lesser included offense.

(4) The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

(5) If the district court on motion after verdict or judgment, or an appellate court on appeal or certiorari, shall determine that there is insufficient evidence to support a conviction for the offense charged but that there is sufficient evidence to support a conviction for an included offense and the trier of fact necessarily found every fact required for conviction of that included offense, the verdict or judgment of conviction may be set aside or reversed and a judgment of conviction entered for the included offense, without necessity of a new trial, if such relief is sought by the defendant.

76-3-203. Felony conviction — Indeterminate term of imprisonment — Increase of sentence if firearm used.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, for a term at not less than five years, unless otherwise specifically provided by law, and which may be for life but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;

(2) In the case of a felony of the second degree, for a term at not less than one year nor more than 15 years but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;

(3) In the case of a felony of the third degree, for a term not to exceed five years but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

76-3-402. Conviction of lower category of offense.

(1) If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes that it would be unduly harsh to record the conviction as being for that category of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense, the court may, unless otherwise specifically provided by law, enter a judgment of conviction for the next lower category of offense and impose sentence accordingly.

76-6-101. Definitions.

For purposes of this chapter:

(1) "Property" means any form of real property or tangible personal property which is capable of being damaged or destroyed and includes a habitable structure.

(2) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

(3) "Property" is that of another, if anyone other than the actor has a possessory or proprietary interest in any portion thereof.

76-6-102. Arson.

(1) A person is guilty of arson if under circumstances not amounting to aggravated arson, he by means of fire or explosives unlawfully and intentionally damages:

(a) any property with intention of defrauding an insurer; or

(b) the property of another.

(2) A violation of Subsection (1)(a) is a second degree felony.

(3) A violation of Subsection (1)(b) is:

(a) a second degree felony if the damage caused exceeds $5,000 value;

(b) a third degree felony if the damage caused exceeds $1,000 but is not more than $5,000 value;

(c) a class A misdemeanor if the damage caused exceeds $250 but is not more than $1,000 value; and

(d) a class B misdemeanor if the damage caused is $250 or less.

76-6-103. Aggravated arson.

(1) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages:

(a) a habitable structure; or

(b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

(2) Aggravated arson is a felony of the first degree.

Rule 103. Rulings on evidence.

(d) **Plain error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

(c) No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury is instructed, stating distinctly the matter to which he objects and the ground of his objection. Notwithstanding a party's failure to object, error may be assigned to instructions in order to avoid a manifest injustice.

Rule 22. Sentence, judgment and commitment.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.